

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL CREDIT UNION ADMINISTRATION :
BOARD, etc., :
                Plaintiff, : 13cv6705 (DLC)
                -v- : 13cv6719 (DLC)
                : 13cv6721 (DLC)
MORGAN STANLEY & CO., et al., : 13cv6726 (DLC)
                : 13cv6727 (DLC)
                Defendants. : 13cv6731 (DLC)
                : 13cv6736 (DLC)
And other NCUA Actions. :
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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

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NATIONAL CREDIT UNION ADMINISTRATION :
BOARD, etc., :
                Plaintiff, : 11cv2340 (JWL)
                -v- : 11cv2649 (JWL)
                : 12cv2591 (JWL)
RBS SECURITIES, INC., f/k/a GREENWICH : 12cv2631 (JWL)
CAPITAL MARKETS, INC., et al., : 12cv2648 (JWL)
                : 13cv2418 (JWL)
                Defendants. :
                :
And other NCUA Actions. :
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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NATIONAL CREDIT UNION ADMINISTRATION :
BOARD, etc.,                          :
                                     Plaintiff, :
               -v-                      :
RBS SECURITIES, INC., f/k/a GREENWICH : 11cv5887 (GW)
CAPITAL MARKETS, INC., et al.,        : 11cv6521 (GW)
                                     :
                                     Defendants. : ORDER
And other NCUA Actions.               :
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HON. DENISE COTE, HON. JOHN W. LUNGSTRUM, and HON. GEORGE H. WU,
District Judges; and HON. JAMES P. O'HARA, Magistrate Judge:

On September 28, 2015, UBS submitted an application to our three Courts requesting that NCUA be ordered to produce a deposition witness pursuant to Federal Rule of Civil Procedure Rule 30(b)(6), as well as certain documentation, to assist it in determining whether to seek spoliation sanctions for the purported failure of Western Corporate Federal Credit Union ("WesCorp") to preserve all counterparty reviews of originators and of servicers and credit reviews. The UBS request arises from deposition testimony given on June 9 and 10, 2015, by William Eberhardt ("Eberhardt"), WesCorp's former Director of Investment Credit Services. Certificates purchased by WesCorp are at issue in actions pending before our Courts in Kansas and California. NCUA has opposed this application in a submission of September 30.

Fact discovery closed in these coordinated actions on July 17, 2015, with certain exceptions not relevant here. Federal Rule of Civil Procedure 16(b)(4) provides that "[a] schedule may be modified only for good cause and with the judge's consent." Whether good cause exists depends upon the diligence of the moving party. See, e.g., Gorsuch, Ltd., B.C. v. Wells Fargo Nat. Bank Ass'n, 771 F.3d 1230, 1240 (10th Cir. 2014); In re W. States Wholesale Natural Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2013); NCUA Order of July 10, 2015 (denying request to modify discovery schedule for failure to show good cause).

UBS has not shown good cause to reopen fact discovery. UBS has failed to show that it acted with sufficient diligence to raise this issue with our Courts, that it would be prejudiced by the denial of this application, or that WesCorp failed to comply with its discovery obligations. Accordingly, it is hereby

ORDERED that UBS's September 28, 2015 application to compel a Rule 30(b)(6) deposition and the production of certain documents is denied.

Dated: October 2, 2015

/s/ Denise Cote

United States District Judge

Dated: October 2, 2015

/s/ George H. Wu

United States District Judge

Dated: October 2, 2015

/s/ John W. Lungstrum

United States District Judge

Dated: October 2, 2015

/s/ James P. O'Hara

United States Magistrate Judge